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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

KT Health, LLC., a Delaware limited liability company, Plaintiff, vs. KT Tape Europe Limited, a United Kingdom private limited company, Defendant.	Civil Action No. 2:17-cv-00325-DBP **COMPLAINT** Magistrate Judge Dustin B. Pead **Jury Trial Demanded**

Plaintiff KT Health, LLC ("KT Health"), for a Complaint against defendant KT Tape Europe Limited ("KTE"), hereby alleges as follows:

I. THE PARTIES

1. KT Health is a Delaware limited liability company with its principal place of business located at 584 E 1100 S., Suite #4 American Fork, UT 84003.

2. KTE is a United Kingdom private limited company with its principal place of business located at 42 Southwark Street, London, England, SE1 1UN.

II. Jurisdiction And Venue

3. The above captioned action (the "Action") arises from KTE's breach of intellectual property provisions in the "KT Tape, Lumos, Inc, Distribution Agreement" that it entered into with KT Health (hereinafter "Distribution Agreement"), its unauthorized reproduction of KT Health's copyrighted materials, and its failure to pay KT Health invoiced amounts. As such, the Action arises under the laws of the United States (i.e., the Copyright Act 17 U.S.C. § 501 *et seq.*) and Utah statutory and common law. In addition to damages, KT Health seeks injunctive relief and specific performance of KTE's contractual duties.

4. The above-entitled Court has jurisdiction over the subject matter of federal claims for relief in the Action pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the Utah state law claims for relief pursuant to 28 U.S.C. § 1367. The Court also has jurisdiction over the subject matter of each of the claims for relief asserted by KT Health in the Action pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship between the two parties (*i.e.*, KT Health is a Delaware limited liability company and KTE is a United Kingdom private limited company with its principle place of business in the U.K.) and the amount placed in controversy by the claims for relief herein exceeds $75,000, exclusive of interest, costs, and attorneys' fees. Likewise, the value of the non-monetary relief sought by the claims for relief set forth herein also exceeds $75,000, exclusive of interest, costs, and attorneys' fees.

5. The Court may properly exercise personal jurisdiction over KTE because, among other things, KTE entered into the Distribution Agreement at issue in Utah, committed tortious acts causing harm and damage to KT Health in Utah, specifically agreed in the Distribution

Agreement that the laws of the State of Utah would govern the interpretation and enforcement of the Distribution Agreement, and made other relevant and substantial contacts in Utah.

6. Venue in this judicial district (i.e., within the State of Utah) is proper pursuant to 28 U.S.C. § 1391(b) & (c), in that (a) a substantial part of the events giving rise to KT Health's claims for relief occurred in this judicial district and (b) KTE is subject to the Court's personal jurisdiction in this judicial district.

III. FACTUAL BACKGROUND

7. KT Health is a privately held company based in Utah that designs, develops, and distributes sports medicine products, including kinesiology tape. KT Health is the industry leader in the kinesiology tape market and its products are distributed worldwide to individuals, medical professionals, and teams through major retailers, specialty sports stores, medical, and team distributors worldwide

8. KT Tape brand kinesiology tape is KT Health's flagship product line. Kinesiology tape is a flexible adhesive tape that is used in therapy to reduce pain and inflammation in overused and injured muscles and joints.

9. On September 7, 2010, KT Health's predecessor, Lumos, Inc.,[1] and KTE (collectively hereinafter the "Parties") entered into the Distribution Agreement.

10. Under the express terms of the Distribution Agreement, it was to remain in effect for 3 years. After three years, the Distribution Agreement expired and the Parties did not renew it.

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[1] In 2015 Lumos, Inc. rebranded as KT Health, LLC. For clarity herein, Lumos, Inc. and KT Health shall be referred to herein as "KT Health."

11. In the Distribution Agreement, KTE agreed that "it shall not use [KT Health's] trade names and/or trademarks without the prior, express written consent of [KT Health]. Under no circumstances shall [KTE], at any time, use [KT Health's] trade names, trademarks, or other proprietary information as part of [KTE's] corporate or trade name. Upon termination of this Agreement, [KTE] shall remove all references to [KT Health] from its letterheads, advertising literature and place of business, and shall not thereafter use any similar or deceptive name or trademark intending to give the impression that there is any relationship between the parties.

12. KT Tape is one of KT Health's federally registered trademarks (U.S. Trademark Registration No. 3.723,455 and European Union Trademark Registration No. 1096541)

13. In violation of the terms of the Distribution Agreement, KTE incorporated the KT Tape trademark into its corporate and trade name.

14. KTE has no right to use KT Health's trademarks. Despite expiration of the Distribution Agreement, KTE continues to use KT Health's KT Tape trademark in its trade name, advertising, literature, and web address, giving the impression that there is a relationship between KTE and KT Health when in fact there is not.

15. KTE also continues to breach the terms of the Distribution Agreement, by using other federally registered trademarks that are owned by KT Health without authorization to do so. KTE's unauthorized use of KT Health's trademarks includes use of the following marks (collectively, "KT Health Trademarks"):

KT TAPE	U.S. Trademark Registration No. 3,723,455

KT TAPE KINESIOLOGY THERAPEUTIC TAPE	U.S. Trademark Registration No. 4,679,986
KT TAPE	U.S. Trademark Registration No. 4,679,985
PLAY HARDER	U.S. Trademark Registration No. 4,995,849
KT TAPE PRO X	U.S. Trademark Registration No. 4,984,114

16. KT Health has sold millions of rolls of kinesiology tape under the KT Health Trademarks.

17. KT Health has consistently promoted the KT Health Trademarks on its packaging and in its advertising, creating a direct consumer association between the KT Health Trademarks and KT Health as source.

18. KT Health has developed recognition and goodwill for the products sold under the KT Health Trademarks among both KT Health's immediate customers and the consuming public generally.

19. As a result of, among other things, KT Health's substantial investment in the KT Health Trademarks, and the products marketed under the KT Health Trademarks, the consuming public recognizes the KT Health Trademarks and associates products and features bearing these marks with a single source, namely KT Health.

20. The primary significance of the KT Health Trademarks among the relevant consumers is to identify KT Health as the source of KT Tape brand kinesiology tape.

21. KTE's ongoing unauthorized use of the KT Tape Trademarks constitutes a breach of the Distribution Agreement.

22. KTE's previously enumerated actions have caused, and continue to cause, KT Health extensive financial damage, and damage to the value and goodwill of KT Health's trademarks.

23. In January 2012, KT Health created and published a series of short original instructional videos to demonstrate the proper technique for applying kinesiology tape to treat common injuries. These videos are copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101, *et seq*.

24. KT Health complied in all respects with provisions of the Copyright Act and each instructional video in the series is marked with notice of copyright along with the year of first publication, 2012.

25. On or about October 24, 2012, KT Health registered the copyright with the United States Copyright Office and was granted Certificate of Registration No. PA0001811032 for its collection of works entitled "KT Tape Instructional Videos" ("'032 Registration"). KT Health is, and has been at all relevant times, the owner of the '032 Registration and of all rights in the copyright on its instructional videos. KT Health has never assigned the copyright in these works to any other entity.

26. KTE has no right to use the KT Tape Instructional Videos. Despite the lack of any right to do so, KTE has copied the KT Tape Instructional Videos and provided links to them on its YouTube channel: https://www.youtube.com/user/KTTapeEurope/videos.

27. KTE's copying and reproduction of the KT Tape Instructional Videos constitutes infringement of KT Health's rights in the same.

28. When KTE was contacted by KT Health regarding cessation of its infringing conduct, KTE refused to do so. Furthermore, in retaliation, KTE indicated that it would destroy KT Health's reputation in the industry.

29. In addition to the significant financial damage that KT Health has and is suffering as a result of KTE's actions, KT Health is suffering immediate and irreparable harm as a result of KTE's actions.

IV. Claims for Relief

First Claim
(*Breach of Contract*)

30. By this reference, KT Health incorporates each of the foregoing allegations.

31. On September 7, 2010, the Parties entered into the Distribution Agreement.

32. Under the express terms of the Distribution Agreement, it was to remain in effect for 3 years. After 3 years, the Distribution Agreement expired and the Parties did not renew it.

33. In the Distribution Agreement, KTE agreed that "it shall not use [KT Health's] trade names and/or trademarks without the prior, express written consent of [KT Health]. Under no circumstances shall [KTE], at any time, use [KT Health's] trade names, trademarks, or other proprietary information as part of [KTE's] corporate or trade name. Upon termination of this Agreement, [KTE] shall remove all references to [KT Health] from its letterheads, advertising literature and place of business, and shall not thereafter use any similar or deceptive name or trademark intending to give the impression that there is any relationship between the parties.

34. In breach of the terms of the Distribution Agreement, KTE has used, and continues to use, KT Health's KT Tape trademark in its corporate or trade name.

35. In further breach of the terms of the settlement agreement, after termination of the Distribution Agreement, KTE has used, and continues to use the KT Health Trademarks in the promotion of its business, thereby giving the impression that there is a relationship between the Parties, when in fact there is not.

36. Additioanlly, KT Health provided KTE with more than $100,000 of KT Tape product. KT Health provided invoices to KTE and associated requests for payment for this product and KTE has refused, and continues to refuse, to pay KT Health for the product provided.

37. KT Health has suffered and will continue to suffer irreparable harm, which may only partially be abated, unless and until KTE is enjoined from using the KT Health Trademarks in connection with KTE's promotion of its business.

SECOND CLAIM
(*Tortious Interference*)

38. By this reference, KT Health incorporates each of the foregoing allegations.

39. KTE has intentionally interfered with KT Health's existing and potential economic relations by using the KT Health Trademarks to represent to consumers that KTE is affiliated with KT Health.

40. In addition to this deceptive conduct, KTE has threatened to take action to destroy KT Health's reputation in the industry.

41. KTE has used improper means, including but not limited to intentionally, willfully, or recklessly making false representation that KTE is affiliated with, sponsored by, or endorsed by KT Health.

42. KTE's actions in this regard have caused, and will continue to cause, injury to KT Health in that customers in the industry are being deceived into buying product from KTE, believing that KT Health is the source of the product.

43. KTE's actions in this regard have caused, and will continue to cause, injury to KT Health in that KTE's misrepresentations are diverting sales of authorized kinesiology tape away from KT Health. On information and belief, KTE is also taking action to harm KT Health's reputation in the industry.

44. KT Health has suffered, and will continue to suffer, irreparable harm unless and until KTE is enjoined from tortiously interfering with KT Health's business and economic relations.

THIRD CLAIM
(Copyright Infringement, 17 U.S.C. § 501)

45. By this reference KT Health realleges and incorporates the foregoing paragraphs as though fully set forth herein.

46. KT Health created and is the owner of all rights in and to the '032 Registration.

47. KT Health, as owner of all rights and interest in and to the '032 Registration, is entitled to exclusive rights to use, reproduce, distribute, publicly display, publish, and prepare derivative works of the same under the Copyright Act, 17 U.S.C. § 106.

48. The videos that are linked and made available through KTE's YouTube channel are identical copies of KT Health's copyrighted series of KT Tape Instructional Videos.

49. KTE is not authorized to copy, reproduce, distribute, publicly display, publish, or prepare derivative works that infringe upon KT Health's rights in the copyright registered in the '032 Registration.

50. KTE's acts of copying, reproduction, publication, and public display of KT Health's instructional videos, covered by the '032 Registration, violate KT Health's exclusive rights granted by 17 U.S.C. § 106, and constitute infringement under 17 U.S.C. § 501.

51. Each video in the series is marked with notice of copyright protection. KTE is aware of KT Health's rights in the copyright to KT Health's series of instructional videos and therefore has reason to believe that its acts constitute infringement of KT Health's copyright, thereby rendering KTE's infringement willful.

52. By reason of KTE"s infringement, KT Health has sustained, and will continue to sustain substantial injury, loss, and damage to its ownership rights in its copyrighted instructional videos.

53. Further, irreparable harm to KT Health is imminent as a result of KTE's conduct, and KT Health is without adequate remedy at law. KT Health is therefore entitled to an injunction restraining KTE, its officers, directors, agents, employees, representatives, and all persons operating in concert with it from engaging in further such acts of copyright infringement, pursuant to 17 U.S.C. § 502.

54. KT Health is further entitled, during the pendency of this action, to an order from the Court impounding KTE's infringing videos, and, as part of the Court's final judgment or decree, an order that KTE's infringing videos be taken down and that all hard copies be destroyed pursuant to 17 U.S.C. § 503.

55. KT Health is further entitled to recover the actual damages suffered as a result of the infringement, in an amount to be proven at trial, along with KTE's profits that are attributable to the infringement, pursuant to 17 U.S.C. § 504, along with KT Health's costs and attorney's fees, pursuant to 17 U.S.C. § 505.

FOURTH CLAIM
(Account Stated)

56. By this reference KT Health realleges and incorporates the foregoing paragraphs as though fully set forth herein.

57. KT Health provided KTE with more than $100,000 of KT Tape product. KT Health provided invoices to KTE and associated requests for payment for this product and KTE has refused, and continues to refuse, to pay KT Health for the product provided.

PRAYER FOR RELIEF

WHEREFORE, KT Health prays that judgment be entered in its favor on each of the foregoing claims for relief, and that:

A. KTE be adjudged to have breached the Distribution Agreement;

B. KTE be adjudged to have infringed KT Health's right in and to the copyright registered in the '032 Registration;

C. KT Health be granted preliminary and permanent injunctive relieve enjoining KTE, its officers, agents, servants, employees, and all those persons in active concert or participation with it from further use of the KT Health Trademarks.

D. KT Health be granted preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502 enjoining KTE, its officers, agents, servants, employees, and all those persons in active concert or participation with it from further acts of infringement of KT Health's copyrights;

E. This Court issue an order impounding KTE's infringing videos pursuant to 17 U.S.C. § 503;

F. As part of final judgment, this Court order the destruction of KTE's infringing videos pursuant to 17 U.S.C. § 503;

G. KT Health be awarded its actual damages, together with KTE's profits that are attributable to KTE's infringement of KTE's copyrights pursuant to 17 U.S.C. § 504;

H. KT Health be awarded damages and KTE's profits, in an amount to be proven at trial, pursuant to applicable state statutory and common law, including at least the greater of KT Health's actual damages and statutory damages of $2,000, pursuant to Utah Code Ann. § 13-11a-4(2)(b);

I. KT Health be awarded its actual damages pursuant to its claim for account stated;

J. KT Health be awarded costs and attorney's fees under 17 U.S.C. § 505;

K. KTE be preliminarily and permanently enjoined from tortuously interfering with KT Health's business and economic relations;

L. KT Health be granted such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

KT Health hereby demands TRIAL BY JURY of all claims and issues presented in this Action so triable.

Dated: April 26, 2017

Respectfully submitted,

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By: */s/ Larry R. Laycock*
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